

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Policy and Rules Concerning)
the Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

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COMMENTS OF THE STATE OF HAWAII

The State of Hawaii (the "State"),¹ by its attorneys, hereby comments upon the "Request for Extension of Compliance Deadline" filed by AMSC Subsidiary Corporation ("AMSC") in the above-captioned proceeding on August 23, 1996.² In its Request, AMSC seeks "an extension for as long a period as possible, but no less than one year" to integrate its rates for Hawaii and other offshore points with its rates for the continental United States ("CONUS").³ The State does not oppose granting AMSC no more than a one-year transition period to come into compliance with the rate integration requirement. To the extent AMSC seeks a transition period beyond one year, which would approximate forbearance from the rate integration requirement, the Request should be treated as part of the AMSC's larger

¹ This petition is submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

² Hereinafter "Request." See also Policy and Rules Concerning the Interstate, Interexchange Marketplace/ Implementation of Section 254(g) of the Communications Act of 1934, as amended, Order and Order Seeking Comment, CC Docket No. 96-61, DA 96-1538 (released Sep. 13, 1996).

³ Request at 5.

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effort to have the Commission reconsider the scope of its recent Report and Order in this proceeding.⁴ Accordingly, the State does not respond to that aspect of the Request, but will do so in response to AMSC's Petition for Reconsideration.⁵

I. The State Does Not Object to Granting AMSC a One-Year Transition Period

Throughout this proceeding, AMSC has sought forbearance from the rate integration requirement of Section 254(g).⁶ In the Report and Order, the Commission expressly rejected that plea.⁷ Now, the company seeks at least temporary relief from the Commission's decision.

Under its current pricing plan, AMSC apparently assesses a flat, per-minute surcharge to subscribers in Hawaii and other offshore points.⁸ The company alleges that it

⁴ See Policy and Rules Concerning the Interstate, Interexchange Marketplace/ Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, CC Docket No. 96-61, FCC 96-331 (released Aug. 7, 1996) ("Report and Order").

⁵ See Petition for Reconsideration of AMSC Subsidiary Corporation, CC Docket No. 96-61 (filed Sep. 16, 1996) ("Petition for Reconsideration" or "Petition").

⁶ See Comments of AMSC Subsidiary Corp., CC Docket No. 96-61 (Apr. 19, 1996); Reply Comments of AMSC Subsidiary Corp., CC Docket No. 96-61 (May 3, 1996).

⁷ Report and Order at ¶ 54.

⁸ AMSC's Request does not specify the size of the surcharge. However, in its Petition for Reconsideration, AMSC states that the surcharge is twenty percent. Petition for Reconsideration at 7-8. According to AMSC's counsel, the surcharge is not tariffed, nor are any of its domestic rates tariffed, because AMSC considers its service to be a Commercial Mobile Radio Service exempt from the Commission's tariff filing requirement. AMSC's international tariff, however, reflects a much larger surcharge. According to that tariff, international communications to and from offshore points are subject to a per-minute surcharge of between 62 and 100 percent. See AMSC Subsidiary Corporation, Tariff F.C.C. No. 1, §§ IV.A-IV.C (Original pp. 10-11) (effective May 2, 1996).

serves these locations using lower-power "peripheral beams." To communicate with AMSC's satellite within these lower-power beams, offshore subscribers must use terminal devices that employ more than twice the power required by CONUS subscribers' devices. These higher-power terminal devices, in turn, allegedly consume more satellite capacity than do lower-power devices.

In support of its Request, the company argues that the surcharge affords it "a price mechanism for allocating its limited power budget and assure[s] that the satellite and the spectrum are used efficiently."⁹ The company also claims that:

- AMSC's service is a unique service, comprised of an indiscernible mix of local, interstate, maritime and international calls;
- AMSC is a small, relatively new carrier, offering a new service in an internationally competitive market, and that its surcharge is necessary to remain efficient and competitive; and
- AMSC has relied upon the Commission's past approval of its satellite design, and the Common Carrier Bureau's previous conclusion that its tariffs were not patently unlawful.¹⁰

AMSC states that it is "prepared to comply with a requirement to eliminate its low-power beam surcharge, but the grant of the requested extension will provide AMSC with additional

⁹ Request at 2-3.

¹⁰ Id., passim.

time to transition to new requirements."¹¹

The State does not object to giving AMSC no more than one year to come into compliance with the rate integration requirement. AMSC has offered few specifics to indicate what it will do with, and thus why it needs, a one-year extension to come into compliance. AMSC has not described how it will use any such extension to develop a compliance plan and thereby lessen the burden its surcharge places on its offshore users. The company's various claims only point out that the company is the sole U.S. separate system offering Mobile Satellite Service, that it is in its start-up phase, and that rate integration would alter its initial pricing scheme. A one-year period to come into compliance under these specific circumstances is, to say the least, generous.¹²

Of course, this should not be read as support for AMSC's current pricing scheme. As the State will elaborate in response to AMSC's Petition, rate integration requires the elimination of geographically-specific surcharges and rates that unreasonably discriminate against offshore points. Because of its location, Hawaii has suffered in the past, and it

¹¹ Id. at 1-2.

¹² The State takes no position at this time as to whether the Commission has authority to "waive," as it has temporarily done here, compliance with the rate integration requirement. The State does note, however, that Congress has expressly instructed the Commission to require the geographic averaging and integration of interexchange rates. The State repeatedly has emphasized that nothing in the statute or the legislative history grants the Commission authority to forbear from the rate integration requirement, and that the history only contemplates forbearance from the averaging requirement in limited circumstances. See H.R. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996). The Commission should thus avoid making any suggestion that carriers may also seek waivers of Section 254(g).

continues today to suffer, undue discrimination in the provision of satellite services.¹³

Section 254(g) of the Act is intended to prevent such discrimination, and the Commission's Report and Order correctly recognizes as much.

II. AMSC's Request for a One-Year Extension Should be Severed from its Request for a Longer Extension, and the Latter Request Should be Consolidated with AMSC's Petition for Reconsideration

Despite AMSC's claim that it is "prepared to comply" with the Commission's implementation of the rate integration requirement, the company has subsequently sought reconsideration of it. Indeed, AMSC's Request is in many ways indistinguishable from its Petition for Reconsideration -- except with regard to its contradictory suggestion in the Request that a one-year transition period would be acceptable. AMSC raises in its Request the very same points to justify an extension as it does in its Petition to justify why the Commission ought to find AMSC's surcharge either exempt from Section 254(g), consistent with that provision, or forborne from enforcement.¹⁴

To the extent AMSC's "Request for Extension of Compliance Deadline" goes beyond a request for temporary relief to come into compliance, it begins to merge with the company's Petition. The Commission should thus treat the Request and the Petition as one

¹³ In addition to AMSC's discriminatory surcharge, Hawaii continues to lack any access to Direct Broadcast Satellite service. Moreover, throughout the past 12 months, the State has urged the Commission to address this gap in DBS service. In doing so, the State has received opposition from two DBS proponents. See, e.g., Consolidated Opposition of the State of Hawaii, FCC File Nos. 758, 759 & 844-DSE-P/L-96 (filed Aug. 27, 1996) (opposing proposals of TelQuest Ventures and Western Tele-Communications to provide DBS service to CONUS from Canadian orbital slots because the proponents would not provide viable service to Hawaii).

¹⁴ See Petition for Reconsideration at 4-9.

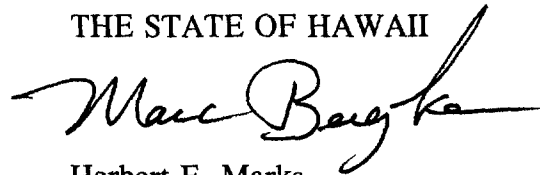
claim. It would be inefficient, and indeed unfair, to require parties to address these virtually identical arguments in separate phases of this proceeding. Accordingly, the State does not respond here to AMSC's plea for longer-term relief, but will later address that issue in response to AMSC's Petition.

III. Conclusion

For the foregoing reasons, the State of Hawaii urges the Commission, in response to AMSC's "Request for Extension of Compliance Deadline," to grant the company no more than 12 months from the adoption of the Report and Order to come into compliance with the Commission's rate integration requirement, and to consolidate the company's plea for any longer extension with its Petition for Reconsideration.

Respectfully submitted,

THE STATE OF HAWAII



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STATE OF HAWAII

October 4, 1996

CERTIFICATE OF SERVICE

I, Marc Berejka, do hereby certify that on this 4th day of October, 1996, I have caused a copy of the foregoing Comments of the State of Hawaii to be served via first class United States Mail, postage pre-paid, upon the persons listed below.


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